

REMARKS

The Office Action dated May 16, 2008 has been carefully reviewed and the following remarks are made in consequence thereof.

Claims 29-31 are pending in this application. Claims 29-31 stand rejected. Claims 1-28 have been canceled.

The rejection of Claims 29-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 15, and 28 of prior U.S. Pat. No. 6,443,329 ("the '329 patent") in view of Ballmann et al. (U.S. Pat. No. 4,550,856) ("Ballmann") is respectfully traversed.

Applicants respectfully traverse the Examiner's assessment of the differences between the claimed invention and the '329 patent. Applicants have addressed the basis for their traversal hereinbelow. However, in an effort to expedite the prosecution of the present patent application, Applicants have also included herewith a Terminal Disclaimer to Obviate a Double Patenting Rejection with respect to U.S. Patent No. 6,443,329. Accordingly, Applicants respectfully request that the obviousness type double patenting rejection be withdrawn and the case be allowed.

Applicants traverse the assessment of the differences between the claimed invention and the '329 patent. Under the proper analysis for obviousness type double patenting, the claims of the commonly owned U.S. Pat. No. 6,443,329 must be compared with the claims of the present application, and the commonly owned patent is not prior art to the pending claims. The sole inquiry is whether the claims in the instant application would be obvious over the claims of the commonly owned patent. See MPEP § 804. The claims must be considered in their entirety in making an obviousness determination.

Considering only the claims of the '329 patent and the pending claims in the present application, differences are clearly evident. As acknowledged on page 3 of the Office Action, the '329 patent does not describe that "the hanging support structure comprises at least one hanging aperture disposed in a wall of the tubular body."

Applicants respectfully submit that the recitations of subject matter not found in Claims 1, 15, and 28 of the '329 patent is not obvious and is patentably distinct from Claims

1, 15, and 28 of the '329 patent. Considering only the claims of the '329 patent, as the obviousness-type double patenting analysis requires, it would not have been obvious to one of ordinary skill in the art to omit certain recitations and to include other recitations in a manner that would have resulted in the present claims. Accordingly, it is submitted that the present claims are not obvious over Claims 1, 15, and 28 of the '329 patent.

Moreover, neither claims 1, 15, and 28 of the '329 patent nor Ballmann, considered alone or in combination, describe or suggest a dispensing container or a blank as recited in the presently pending claims. More specifically, Ballmann describes a device (10) for storing and dispensing face masks (12). The device (10) includes a container (14) having four sidewalls (40) that enclose a cavity of the container (14) in which the face masks (12) are stored. A top (42) of the container (14) is generally planar and hingedly attached to a front sidewall (40a), and a bottom (44) of the container (14) is generally planar and hingedly attached to a back sidewall (40b). When the bottom (44) of the container (14) is open and/or removed, a retainer means (16) within the container (14) retains the face masks (12) in the container (14) until a mask (12) is dispensed through the retainer means (16) at a bottom end of the container (14). An attachment structure (48) extends upward from the back sidewall (40b) past the top (42) of the container (14). The attachment structure (48) includes apertures (50) defined therethrough for hanging the device (10). As such, the apertures (50) are not defined through the sidewalls (40) of the container (14) that define the cavity, but, rather, the apertures (48) are defined through a structure (48) that extends from a sidewall (40b) past the top (42) of the container (14).

Claim 29 recites a dispensing container operably configured to be suspended from a support for facilitating dispensing of fluent material, the dispensing container comprising "a substantially tubular body defining and enclosing a cavity of the dispensing container, the cavity defining a fluent material containment volume . . . a nozzle receiving structure operably disposed in the bottom dispensing region, the nozzle receiving structure securely but releasably, restrainedly receiving a dispensing nozzle . . . and a hanging support structure defined through the tubular body to enable the dispensing container to be removably hung upon and supported by a projecting support member, wherein the hanging support structure comprises at least one hanging aperture defined in a wall of the tubular body, the at least one hanging aperture providing access to the cavity"

More specifically, neither claims 1, 15, and 28 of the '329 patent nor Ballmann, considered alone or in combination, describe or suggest a dispensing container that includes a hanging support structure defined through a tubular body and including at least one hanging aperture defined in a wall of the tubular body, wherein the hanging aperture provides access to a cavity defined by the tubular body. Rather, Ballmann describes hanging apertures that are defined through an attachment structure that extends from a back sidewall of a container past a top of the container. As such, the apertures in Ballmann are not defined through a sidewall that defined a cavity and do not enable access to the cavity of the container because the attachment structure does not define the cavity.

Accordingly, for at least the reasons set forth above, Claim 29 is submitted to be patentable over Claims 1, 15, and 28 of the '329 patent in view of Ballmann.

Moreover, neither claims 1, 15, and 28 of the '329 patent nor Ballmann, considered alone or in combination, describe or suggest the a blank for forming a dispensing container as recited in Claim 30, which recites a blank for forming a dispensing container operably configured to be suspended from a support for facilitating dispensing of fluent material, the blank comprising "a plurality of at least three substantially rectangular side wall panels operably connected to one another along longitudinally extending lines of weakness extending between adjacent ones of the side wall panels . . . to form, in part, a substantially tubular body comprising an opening in an upper portion of the substantially tubular body; at least one top closure panel . . . a plurality of bottom panels . . . to enable the formation of a bottom dispensing region . . . the plurality of at least three side wall panels, the at least one top closure panel, and the plurality of bottom panels collectively forming the substantially tubular body . . . a nozzle receiving structure operably disposed in at least one of the bottom panels, the nozzle receiving structure securely but releasably, restrainedly receiving a dispensing nozzle . . . and at least one hanging aperture defined through one of the at least three substantially rectangular side wall panels, wherein, upon articulation of the blank into the dispensing container, the at least one hanging aperture enables access to the cavity...."

More specifically, neither claims 1, 15, and 28 of the '329 patent nor Ballmann, considered alone or in combination, describe or suggest a blank for forming a dispensing container that includes at least one hanging aperture defined through one of at least three substantially rectangular side wall panels, wherein, upon articulation of the blank into a dispensing container, the hanging aperture enables access to a cavity of the dispensing

container. Rather, Ballmann describes hanging apertures that are defined through an attachment structure that extends from a back sidewall of a container past a top of the container. As such, the apertures in Ballmann are not defined through a sidewall that defined a cavity and do not enable access to the cavity of the container because the attachment structure does not define the cavity.

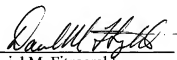
Accordingly, for at least the reasons set forth above, Claim 30 is submitted to be patentable over Claims 1, 15, and 28 of the '329 patent in view of Ballmann.

Claim 31 depends from independent Claim 30. When the recitations of Claim 31 are considered in combination with the recitations of Claim 30, Applicants submit that dependent Claim 31 likewise is patentable over Claims 1, 15, and 28 of the '329 patent in view of Ballmann.

For at least the reasons set for above, Applicants respectfully request that the non-statutory obviousness-type double patenting rejection of Claims 29-31 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully requested.

Respectfully Submitted,



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